

wrongful acts or omissions of ARNG personnel acting within the scope of employment, within the United States while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709 will be processed under the FTCA, § 536.50. Such claims arising before 29 December 1981 will, except as modified herein, be processed and settled in accordance with the provisions of §§ 536.20 through 536.35.

(b) *Noncombat activities.* A claim incident to the noncombat activities of the ARNG while engaged in duty or training under 32 U.S.C. 316, 502, 503, 504, 505, or 709 may be settled under §§ 536.70 through 536.81. “Noncombat activities” are defined in § 536.3.

(c) *Subrogated claims.* Subrogated claims will be processed as prescribed in § 536.5(b).

(d) *Advance payments.* Advance payments in partial settlement of meritorious claims to alleviate immediate hardship are authorized as provided in § 536.13.

§ 536.74 Claims not payable.

The type of claims listed in § 536.24 as not payable are also not payable under §§ 536.70 through 536.81.

§ 536.75 Notification of incident.

Except where claims are regularly paid from State sources, for example, insurance, court of claims, legislative committee, etc., the appropriate adjutant general will ensure that each incident which may give rise to a claim cognizable under §§ 536.70 through 536.81 is reported immediately by the most expeditious means to the area claims office in whose geographic area the incident occurs or to a claims processing office designated by the area claims office. The report will contain the following information:

- (a) Date of incident.
- (b) Place of incident.
- (c) Nature of incident.
- (d) Names and organizations of ARNG personnel involved.
- (e) Names of potential claimant(s).
- (f) A brief description of any damage, loss, or destruction of private property, and any injuries or death of potential claimants.

§ 536.76 Claims in which there is a State source of recovery.

Where there is a remedy against the State, as a result of either waiver of sovereign immunity or where there is liability insurance coverage, the following procedures apply:

(a) Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by the Commander, USARCS. Such procedures will be designed to ensure that local authorities and U.S. authorities do not issue conflicting instructions for processing claims, and whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (c) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(b) If there is a remedy against the State or its insurer, the claimant may be advised of that remedy. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made under §§ 536.70 through 536.81. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable from the State or its insurer and the settlement normally will be also deducted from the payment by the United States.

(c) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State